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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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April 8, 2019

Captain Kent Wegener
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Peter Firchow
J.S.I.D. File #17-0096
L.A.S.D. File #017-00705-6884-011

Dear Captain Wegener:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 13, 2017, non-fatal shooting of Peter Firchow by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Jorge Perez, #[redacted]



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MEMORANDUM

TO:	CAPTAIN KENT WEGENER Los Angeles County Sheriff's Department Homicide Bureau 1 Cupania Circle Monterey Park, California 91755
FROM:	JUSTICE SYSTEM INTEGRITY DIVISION Los Angeles County District Attorney's Office
SUBJECT:	Officer Involved Shooting of Peter Firchow J.S.I.D. File #17-0096 L.A.S.D. File #017-00705-6884-011
DATE:	April 8, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 13, 2017, non-fatal shooting of Peter Firchow by Los Angeles County Sheriff's Department (LASD) Deputy Jorge Perez. We have concluded that Deputy Perez acted lawfully in self-defense.

The District Attorney's Command Center was notified of the shooting at approximately 4:28 p.m., on February 13, 2017. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene by LASD Homicide Bureau Lieutenant Steve Jauch.

The following analysis is based on investigative reports, audio recordings, firearm analysis reports, photographic and video evidence, and witness statements submitted to this office by LASD Homicide Bureau Lieutenant Steve Jauch, Sergeant Richard Ruiz and Sergeant Marcelo Quintero. Perez's voluntary statement and preliminary hearing testimony, in the case number LA085398, was considered as part of this analysis.

FACTUAL ANALYSIS

On February 13, 2017, at approximately 2:40 p.m., LASD Deputy Jorge Perez was in full uniform and was assigned to Transit Policing Division. He was working alone as a one-man unit. He was having lunch at Ay Papa Que Rico, a restaurant located at 7344 Van Nuys Boulevard, in the City of Los Angeles. Perez was seated alone inside the restaurant eating. His seat afforded him a view of the outside patio. He observed four young men walk into the patio area and sit at a table. Perez saw two of the men snort an unknown substance into their noses using a key ("key shot"). Perez got up from his booth and walked over to the window to get a closer view.

The two men he saw snorting the substance got up, left the patio through an outside exit, and walked away. Perez walked out onto the patio to get the last two to leave.[1]

Perez approached the remaining two men, later identified as [redacted] and Peter Firchow, and asked why they were on the patio without purchasing any food from the restaurant. Both [redacted] and Firchow said they were waiting for a ride. Perez asked them, "Who's got the dope?" Firchow told [redacted] "Hey, just tell him you got it bro. Just fess up. Just tell him you got it." Perez then ordered [redacted] to get up and turn around. Perez removed several objects from [redacted] pants pockets, including marijuana and pill bottles, and placed the items on an adjacent glass table. Perez ordered [redacted] to get on his knees on the ground facing away from him (Perez). [redacted] did so. Perez handcuffed him and turned his attention to Firchow.

Firchow stood up and made a call on his cell phone. Perez told Firchow to end the call. Firchow did so, then threw the phone onto an adjacent glass patio table. Perez ordered Firchow to put his hands behind his back. Firchow was facing Perez; he put his right hand into his right shorts pocket. Perez took hold of Firchow's left arm with his left hand and told Firchow to remove his right hand from his pocket. Perez unsnapped his holster, unsure if Firchow was going to comply. Firchow stated, "I'm dirty bro. I'm dirty." Perez did not know exactly what Firchow meant by that statement, but thought it possibly meant he had drugs on his person.

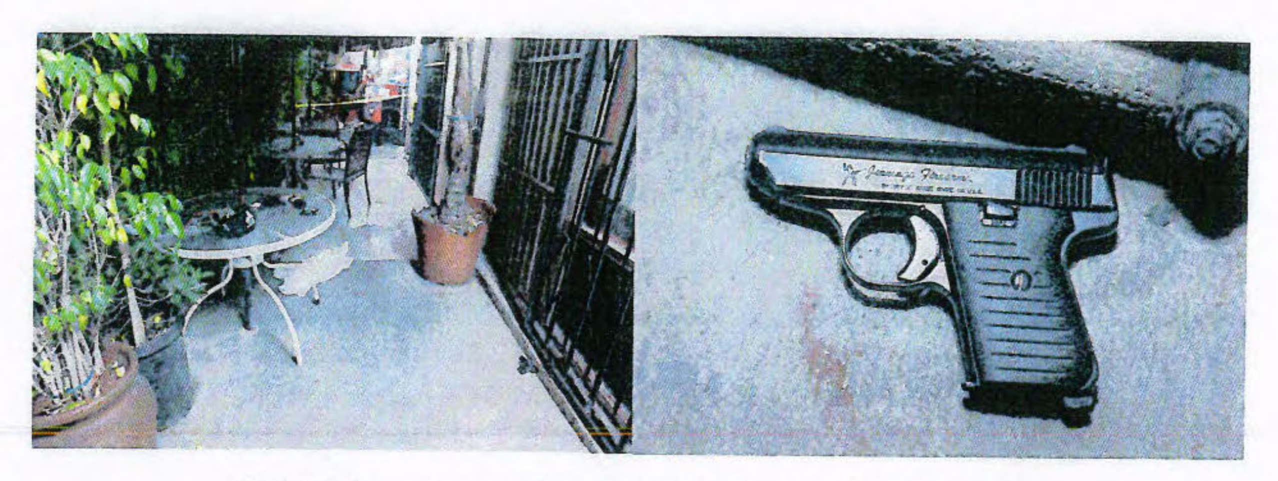
Perez, holding Firchow's left arm, tried to turn Firchow so he could place Firchow's arms behind his back to facilitate a pat-down for weapons. Perez felt Firchow tense up, resisting Perez's attempt to turn Firchow around. Firchow removed his right hand from his pocket and Perez saw that Firchow was holding a small handgun in his right hand. Firchow shifted his body to his right and simultaneously brought the gun up diagonally across his chest so that the muzzle was pointing toward Perez's upper body/head. Perez immediately let go of Firchow, unholstered his service weapon, took one to two steps back and to the right, and pointed the muzzle of his service weapon at Firchow, yelling, "Drop it! Drop the gun! Drop the gun!" Firchow did not comply with Perez's command to drop the gun. Firchow kept the muzzle of his gun pointed toward Perez and rotated to the right. Perez fired one round which struck Firchow in the lower right stomach area. Firchow dropped the gun as he fell to the ground.[2]

Perez provided a voluntary interview to Detectives Richard Ruiz and Marcelo Quintero. Perez stated to the detectives, as to the reason why he shot Firchow, "I thought he was going to shoot me." Perez also told the detectives that he did not know why Firchow did not shoot him, but that he definitely could have done so.

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[1] A surveillance video recording within the interior of Ay Papa Que Rico restaurant shows Perez looking in the direction of the patio, standing up, walking to the exterior window next to the patio, then walking out of view, consistent with Perez's statement.

[2] Firchow's handgun was later photographed where it lay on the ground next to the front of the building. Los Angeles Police Department Officers [redacted] and [redacted] (no relation) responded to the deputy-involved shooting. [redacted] reported observing the handgun approximately three feet to the east of Firchow's legs as Firchow was moving his unhandcuffed arms. [redacted] reported that [redacted] moved the handgun further east towards the wall, away from Firchow's reach, prior to handcuffing Firchow.



Firchow's firearm recovered from the ground on the patio of Ay Papa Que Rico

Paramedics arrived and transported Firchow to Providence Holy Cross Medical Center. Firchow suffered a gunshot wound to the lower right quadrant of his front torso. Firchow was treated at the hospital and survived his injuries.

Perez was armed with his department issued 9mm caliber Smith & Wesson Model 92F semiautomatic pistol. This firearm has a maximum capacity of sixteen rounds. After this incident, Perez's pistol contained fifteen rounds. One expended casing, matching Perez's service weapon, was located on the ground behind where Perez stood when he shot Firchow.



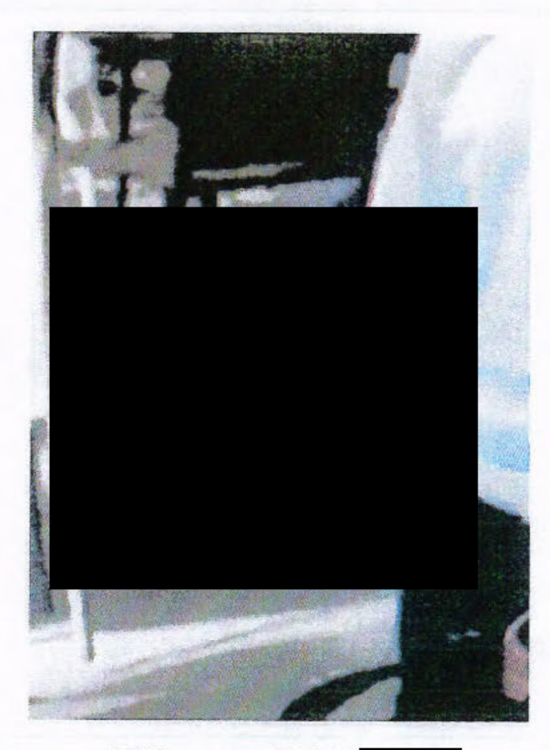
Expended casing on the ground next to the patio of Ay Papa Que Rico

Firchow's gun was a Jennings, Model J22, .22 caliber semiautomatic handgun. The gun, as well as the magazine located within the magazine well, were examined by Criminalist Philip Teramoto. The chamber was empty. There were six live .22 caliber long rifle cartridges located within the magazine. The firearm was missing a trigger bar assembly. Teramoto determined that the handgun was non-functional.

No other law enforcement personnel were present to witness what transpired. Perez was not wearing a body-worn video camera. Multiple restaurant employees were interviewed but none witnessed the events preceding the shooting or the actual shooting. One restaurant patron who observed some of the incident was interviewed. Several friends of Firchow who were percipient witnesses did not remain to be interviewed by law enforcement. They were interviewed on later dates regarding their observations.

Video Evidence

[redacted] Firchow's [redacted] was not present during the incident, but was later given three videos and one still image of the incident taken by one or more friends of Firchow that she emailed to Ruiz.[3]



Still image provided by [redacted]

The first video is 59 seconds long.[4] The camera appears to be just outside the patio, and to the south of, Ay Que Papa Rico. The view is of the interior of the patio where Firchow is recorded laying on the ground on his back with his knees bent. Firchow's feet are closest to the camera, his head is furthest away. [redacted] is in the foreground in front of and to the side of Firchow, on his knees with his hands behind his back, facing the camera. The videographer states, "Hey Peter my boy, you good?" The videographer, with the camera lens facing in the direction he is walking, walks to

[3] It is unclear exactly who took the videos. Witness [redacted] also had those videos on her cell phone and showed Ruiz the same videos. She told Ruiz and Quintero that the videographer was either or both a man named "[redacted] and/or "[redacted]"

[4] The video is titled "136." The still image, above, appears to be a zoomed-in image from the beginning of the first video.

the sidewalk, then walks northbound on the sidewalk along the front of the patio. He stops just south of the entrance to the patio with the camera facing the patio, and recorded the back of a deputy standing and facing Firchow. Firchow is in partial side-view on the ground in the same position as before. The deputy yells, "Stay down! Stay down!" The videographer states, "Man, he's trying man. You just shot him." The deputy turns slightly toward the videographer and states, "Shut up. Just move over there." The videographer remains in the same area filming the back of the deputy. The deputy turns sideways toward the camera and yells, "I said move over there!" The videographer steps back slightly south of his prior position. The camera captures the back of the deputy, who is turned facing Firchow again. The videographer goes southbound, walking backward. The camera view is of bushes in front of the patio. He states, "Man bitch ass fool dog." He then moves back to his original position filming [redacted] and Firchow. The video ends.

The second video is 59 seconds long.[5] It is recorded on the same sidewalk area as the first video. The video, with a siren in the background, is of the back and side of a different male deputy as he is moving in the entrance area to the patio off of the sidewalk. The deputy has his weapon drawn and appears to be scanning the interior patio area. The videographer says, "There's a sergeant right here. He just shot my, my friend. He wasn't even shot. The only thing, right here we seen everything. The cop just shot him. Supposedly saying that he was dangerous." The deputy with his elbow up, parallel to the ground, and his back to the videographer, waves his left hand in a backward motion. The words "Back, back, back, back," are audible. The videographer turned slightly toward the street. His camera partially captured the body of another individual, wearing a blue sweatshirt and a light-colored backpack, holding up a cell phone camera toward another male deputy. That deputy is standing on the sidewalk at the curb line, across from the patio entrance. That deputy (whose head is cut-off from view), begins walking forward toward the videographer and gesticulating toward him with his right arm and hand. The same voice stated, "Get back. Get back. Get back. Move back. Move back over here," as the videographer backed up southbound, and turned the camera toward the entrance to the 98¢ Store. There were several people near the entrance to the 98¢ Store. The videographer turned the camera back northward and filmed that deputy walking northbound on the sidewalk away from him and into the restaurant patio area. The camera then shows the street in front of the restaurant as a black and white police vehicle is driven at an angle on the street in front of the restaurant and stops. A male officer wearing a black uniform gets out of the front passenger-side door and approaches the patio with a black handgun drawn. The words, "All this commotion for nothing," are heard. The video ends.

The third video is 59 seconds long.[6] There is the sound of a siren in the background. The videographer is standing south of the restaurant patio recording into that area. He walks sideways, passing behind a second male wearing a brown shirt and a backward-facing "LA Dodgers" baseball cap holding up a cell phone toward the same area. There are two male police officers wearing black uniforms in the patio area. They are moving around. One points a shotgun at the ground as the other moves toward the restaurant wall area. The camera view of them is partially blocked by bushes. As the videographer is recording their actions, he states, "They shot him in the stomach

[5] The video is titled "IMG_0690.mp4."
[6] The video is titled "IMG_0691.mp4."

[unintelligible] the stomach." The videographer pans to the street where two deputies are standing in the street talking. He states, "The guy that shot him is right there," as he zooms in on the deputy standing on the right. A third deputy walks up to the two deputies as the videographer zooms out. The videographer pans back to the patio area where the two black-uniformed officers are standing. The video ends.

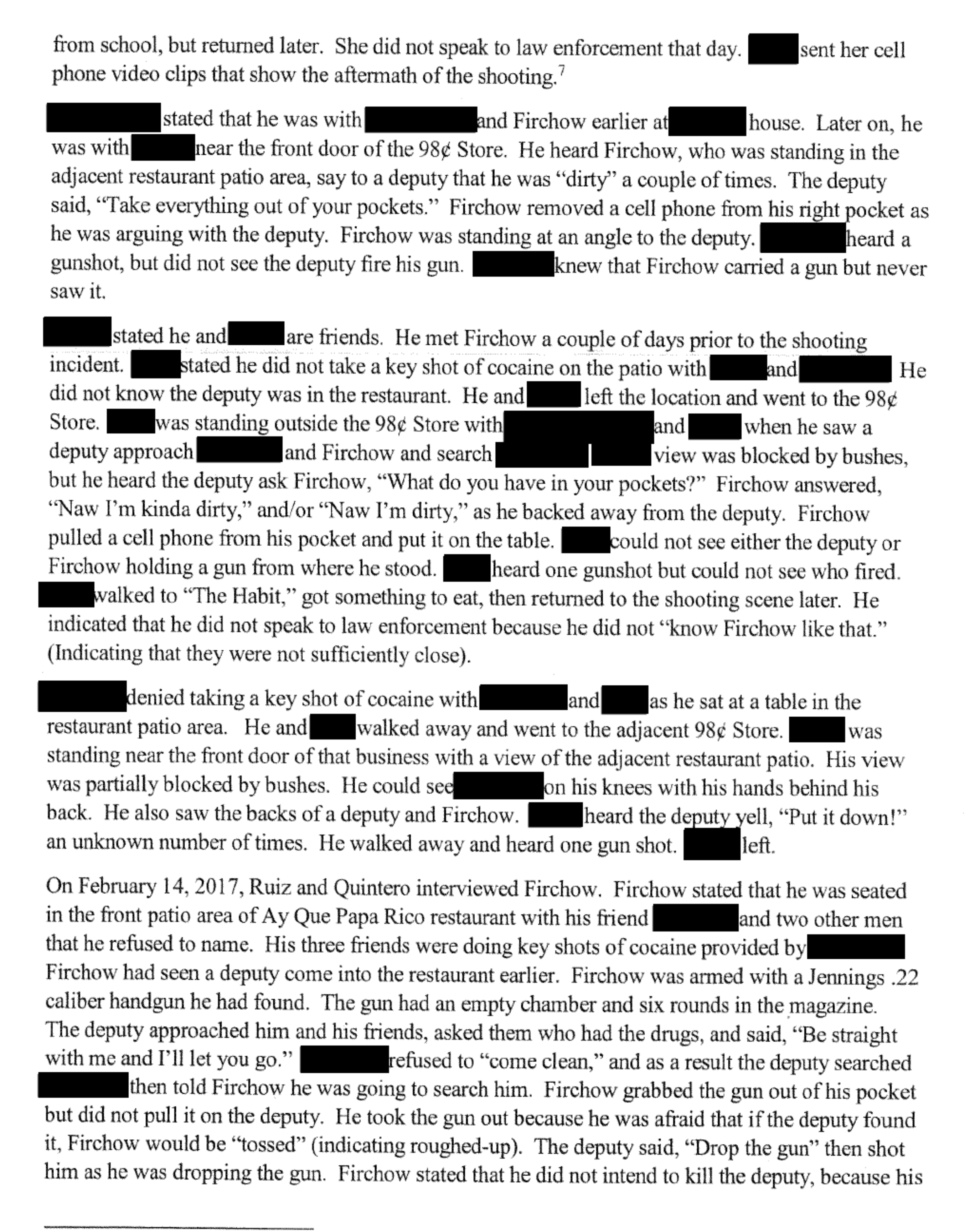
[redacted] a restaurant patron who worked in the area, sat behind the deputy eating within the restaurant. He saw the deputy go to the window adjacent to the patio and look outside onto the patio. The deputy seemed calm when he walked outside to the patio. The deputy spoke with the men outside but [redacted] could not hear what exactly was being said. It appeared to him to be an argument. [redacted] heard, "Drop the gun," then a few seconds later heard a gunshot.

[redacted] owner of [redacted] located [redacted] from Ay Papa Que Rico, was working in the [redacted] when he heard a loud "pop." He looked out the front window and saw a deputy pointing a gun at someone he recognized as a local he knew to carry a gun and do drugs.

[redacted] was interviewed twice by Ruiz and Quintero after waiving his *Miranda* rights. During the first interview on February 13, 2017, [redacted] said he was with his [redacted] Firchow, on the patio of Ay Papa Que Rico waiting for a ride, when friends "[redacted]" and "[redacted]" showed up and joined them. [redacted] initially denied ingesting any cocaine but later admitted that he did. He said [redacted] and [redacted] took key shots of cocaine. [redacted] and [redacted] then walked away. A sheriff's deputy showed up, searched him, and told him to get on his knees. [redacted] back was to the deputy and Firchow when he heard Firchow say, "I'm dirty." [redacted] heard the deputy tell Firchow, "Drop the gun" three to four times before [redacted] heard one shot.

Shortly after [redacted] first interview, a bindle of cocaine was found by transporting Deputy Christopher Conger in the back seat of the patrol car in which [redacted] had been transported. Ruiz and Quintero again interviewed [redacted] within *Miranda*. [redacted] admitted the cocaine was his. The bindle contents tested positive for cocaine. [redacted] urine sample also tested positive for cocaine.

[redacted] ("[redacted]") told Ruiz and Quintero that she considers Firchow to be like a [redacted] She knows Firchow to carry a .22 caliber small handgun. Early in the day of February 13, 2017, she was with [redacted] Firchow, [redacted] and [redacted] at her residence. She drove them to get food while she shopped at the 98¢ Store for candy with [redacted] They were in the front doorway of that store, which is a few feet away from the Ay Papa Que Rico patio area, when she saw a deputy approach [redacted] as he sat with Firchow on the patio. The deputy told [redacted] "I'm gonna have to search you. I saw what you did." She watched the deputy search [redacted] and then tell Firchow, "I've got to search you." Firchow turned around as if to walk away, then turned back toward the deputy and stated, "I'm dirty." Firchow put his hand in the front pocket of his basketball shorts and took out both a cell phone and a gun simultaneously. The deputy told Firchow to "Drop the gun" three to four times then shot Firchow once at close range. [redacted] left to go pick up her [redacted]



from school, but returned later. She did not speak to law enforcement that day. [redacted] sent her cell phone video clips that show the aftermath of the shooting.[7]

[redacted] stated that he was with [redacted] and Firchow earlier at [redacted] house. Later on, he was with [redacted] near the front door of the 98¢ Store. He heard Firchow, who was standing in the adjacent restaurant patio area, say to a deputy that he was "dirty" a couple of times. The deputy said, "Take everything out of your pockets." Firchow removed a cell phone from his right pocket as he was arguing with the deputy. Firchow was standing at an angle to the deputy. [redacted] heard a gunshot, but did not see the deputy fire his gun. [redacted] knew that Firchow carried a gun but never saw it.

[redacted] stated he and [redacted] are friends. He met Firchow a couple of days prior to the shooting incident. [redacted] stated he did not take a key shot of cocaine on the patio with [redacted] and [redacted] He did not know the deputy was in the restaurant. He and [redacted] left the location and went to the 98¢ Store. [redacted] was standing outside the 98¢ Store with [redacted] and [redacted] when he saw a deputy approach [redacted] and Firchow and search [redacted] view was blocked by bushes, but he heard the deputy ask Firchow, "What do you have in your pockets?" Firchow answered, "Naw I'm kinda dirty," and/or "Naw I'm dirty," as he backed away from the deputy. Firchow pulled a cell phone from his pocket and put it on the table. [redacted] could not see either the deputy or Firchow holding a gun from where he stood. [redacted] heard one gunshot but could not see who fired. [redacted] walked to "The Habit," got something to eat, then returned to the shooting scene later. He indicated that he did not speak to law enforcement because he did not "know Firchow like that." (Indicating that they were not sufficiently close).

[redacted] denied taking a key shot of cocaine with [redacted] and [redacted] as he sat at a table in the restaurant patio area. He and [redacted] walked away and went to the adjacent 98¢ Store. [redacted] was standing near the front door of that business with a view of the adjacent restaurant patio. His view was partially blocked by bushes. He could see [redacted] on his knees with his hands behind his back. He also saw the backs of a deputy and Firchow. [redacted] heard the deputy yell, "Put it down!" an unknown number of times. He walked away and heard one gun shot. [redacted] left.

On February 14, 2017, Ruiz and Quintero interviewed Firchow. Firchow stated that he was seated in the front patio area of Ay Que Papa Rico restaurant with his friend [redacted] and two other men that he refused to name. His three friends were doing key shots of cocaine provided by [redacted] Firchow had seen a deputy come into the restaurant earlier. Firchow was armed with a Jennings .22 caliber handgun he had found. The gun had an empty chamber and six rounds in the magazine. The deputy approached him and his friends, asked them who had the drugs, and said, "Be straight with me and I'll let you go." [redacted] refused to "come clean," and as a result the deputy searched [redacted] then told Firchow he was going to search him. Firchow grabbed the gun out of his pocket but did not pull it on the deputy. He took the gun out because he was afraid that if the deputy found it, Firchow would be "tossed" (indicating roughed-up). The deputy said, "Drop the gun" then shot him as he was dropping the gun. Firchow stated that he did not intend to kill the deputy, because his

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[7] [redacted] showed Ruiz the video clips in her possession. They were the same that he had already obtained from [redacted]

[redacted] is [redacted] an LAPD Van Nuys Division officer, and the deputy had more rounds than him. Firchow admitted he was not supposed to have a gun because of his criminal history. The deputy, who he decribed as "polite," did his job and he was not mad at him. Firchow repeatedly blamed [redacted] for being shot, because [redacted] did not tell the deputy that he ([redacted]) had the drugs.

LEGAL ANALYSIS

According to California law, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. CALCRIM No. 505.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Graham v. Connor (1989) 490 U.S. 386, 396-397.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 3470; *see also* People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. Id.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146.

In the instant matter, Firchow was holding a loaded handgun with the muzzle pointed toward Perez's upper body/head. Despite numerous commands to drop the gun, Firchow continued to hold the gun with the muzzle pointed in Perez's direction. Reasonably fearing for his life, Perez fired

one shot from his service weapon. At least one witness observed Firchow with a gun in his hand, and Firchow himself admits he took the gun from his pocket. Several witnesses heard Perez order Firchow to drop the gun, and a gun was found in close proximity to Firchow. Although a later examination found Firchow's handgun to be inoperable, this fact does not mitigate the reasonableness of Perez's fear.

CONCLUSION

We find that Deputy Jorge Perez acted lawfully in self-defense when he used deadly force against Peter Firchow. We are closing our file and will take no further action in this matter.